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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,879	08/20/2003	Peter Mark Grehlinger	TA-612-US	5213
36183 7590 11/18/2008 PAUL, HASTINGS, JANOFSKY & WALKER LLP 875 15th Street, NW Washington, DC 20005				
EXAMINER				
VU, KIEU D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/643,879

Applicant(s)

GREHLINGER ET AL.

Examiner

KIEU D. VU

Art Unit

2175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/18/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is responsive to the request for reconsideration filed on 08/18/2008.
2. Claims 1-2 and 4-29 are pending.
3. The Declaration under 37 CFR 1.132 filed on 04/28/08 is sufficient to overcome the rejection of claims 1-2 and 4-29 based upon Frank. The finality of the last Office action is withdrawn.

Claim Objections

4. Claims 4-6 are objected to because of the following informalities: they depend on canceled claim 3. Appropriate correction is required. For rejection purpose, these claims are considered as being dependent on claim 1.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-2, 4-12, 18-22, and 28-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 18, and 28-29 recite the limitation "the user" (see line 8 of claim 1, line 8 of claim 18, line 9 of claim 28, line 9 of claim 29). There is insufficient antecedent basis for this limitation in the claim. Dependent claims incorporate this deficiency.

Claim 29 recite the limitation "the test" (see line 6, both occurrences). There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-2, 4-10, and 13-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dove et al (hereinafter "Dove", US 2003/0035004), Petruk et al (hereinafter "Petruk", US 2002/0196283) and Shin et al (hereinafter "Shin", US 6484566).

Regarding claims 1, 13, 18, 23, 26, 28-29, Dove teaches a method for dynamically controlling operation of a device, comprising: creating a program on a programming interface for executing a test upon a sample in a device by receiving user selections of a plurality of nodes and connections of each node to another node according to directional connection indicators, wherein nodes indicate steps for performing a test upon a sample or configuring a device for performing a test upon a sample [0018]; creating scripts for generating a sequence of instructions to the device, wherein the scripts include instructions for performing steps indicated by each of the selected nodes and in accordance with the directional connection indicators ([0022], [0097]); downloading low-level instructions from the scripts for execution in the device; and instructing systems in the device to perform the downloaded instructions ([0077], [0097]). Dove does not explicitly teach of identifying parameters associated with each selected node and receiving respective parameter values from a user. In the same field

of Dove's invention, Petruk teaches a method for creating a graphical program ([0015] [0127]) wherein a node is configured by identifying parameters associated with each selected node and receiving respective parameter values from a user ([0131], [0139], [0151], [0163], [0187])). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include Petruk's teaching into Dove's test interface with the motivation being to enable the user to vary the values or parameters for testing steps thus enhance the flexibility of Dove's test interface. Dove in view of Petruk teaches wherein the scripts are generated in accordance with the selected parameter value (Dove, [0022]) (Petruk, [0151]) and further teaches that the device can be used in testing and measuring (Dove, [0006]) (Petruk, [0064]) but does not specifically teach that the device is a rheometer. Shin teaches that a rheometer for testing and measuring, the rheometer comprises an interface for user input (Fig. 12, col. 21, lines 1-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include Shin's rheometer integration into Dove's test interface with the motivation being to enhance the usefulness and application of Dove's invention.

Regarding claim 2, Dove teaches wherein the programming interface is a graphical user interface enabling a user to select pre-existing icons or create icons representative of nodes ([0018]).

Regarding claim 4, Dove-Petruk-Shin teaches a step of generating forms for prompting a user to enter, confirm, or modify parameter values (Dove [0020]) wherein each parameter corresponds to a field in a given form (Petruk, [0151] [0187]).

Regarding claims 5, 20, Dove teaches wherein scripts are created in accordance with information retrieved from a node class library, which tracks parameters associated with nodes and connections between nodes ([0020], [0097]).

Regarding claim 6, Dove teaches wherein certain nodes are dynamically created, further comprising a step of determining parameters to be identified for each dynamically created node ([0011], [0012], [0020]).

Regarding claims 7, 21, Dove teaches wherein a sequence engine in the rheometer receives the scripts for executing the instructions independently of the programming interface ([0097]).

Regarding claims 8, 22, Dove teaches wherein the scripts are downloaded to the rheometer via a TCP/IP connection for operation without further intervention from the programming interface [0097]).

Regarding claims 9, 16, Dove teaches wherein certain selected nodes are representative of a plurality of other nodes connected by directional connection indicators for grouping instructions associated with a test to be performed in the rheometer ([0012], [0018]).

Regarding claims 10, 17, 19, Dove teaches wherein the programming interface includes a chart for enabling a user to graphically select and drag icons from a palette ([0020], [0057]).

Regarding claim 14, Dove teaches wherein scripts are created for generating a sequence of instructions to the rheometer indicated by each of the selected nodes and

in accordance with the directional connection indicators and data flow indicators (0018)).

Regarding claim 15, Dove teaches wherein low-level instructions are downloaded from the scripts for instructing drivers in the rheometer for performing the downloaded instructions ([0022], [0077]).

Regarding claim 24, Dove teaches wherein the output interface additionally downloads instructions to an analysis and presentation tool for creating reports for display to a user ([0073], [0076], [0077]).

Regarding claim 25, Dove teaches wherein the programming interface operates on a graphical user interface for enabling selection of nodes and connections of nodes without requiring a user to enter programming code ([0011]).

Regarding claim 27, Dove teaches comprising the step of encapsulating a sequence of steps for performing a test in a rheometer to be represented as a single icon ([0077]).

9. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dove et al (hereinafter "Dove", US 2003/0035004), Petruk et al (hereinafter "Petruk", US 2002/0196283), Shin et al (hereinafter "Shin", US 6484566), and Kodosky et al ("Kodosky", USP 7219306).

Regarding claim 11, Dove-Petruk-Shin does not teach wherein the programming interface includes a tree view for hierarchical navigation through selected nodes. Kodosky teaches a measurement system wherein the programming interface includes a tree view for hierarchical navigation through selected nodes (line 61 of col. 11 to line

1 of col. 12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include Kodosky's tree view for hierarchical navigation through selected nodes in Dove with the motivation being to provide the user with a clear and better view of the programming interface.

Regarding claim 12, Dove-Petruk-Shin teaches the programming interface includes a chart for enabling a user to graphically select and drag icons from a palette ([0020], [0057]) but does not teach wherein the programming interface includes a tree view for hierarchical navigation through selected nodes. Kodosky teaches a measurement system wherein the programming interface includes a tree view for hierarchical navigation through selected nodes (line 61 of col. 11 to line 1 of col. 12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include Kodosky's tree view for hierarchical navigation through selected nodes in Dove with the motivation being to provide the user with a clear and better view of the programming interface.

10. Applicant's arguments filed on 08/18/08 have been considered but they are moot in view of new ground of rejection.

Applicant argues "it would not be obvious to use the combination of Dove and Petruk to control the operation of a rheometer". The Examiner respectfully disagrees. Dove in view of Petruk teaches the scripts are generated in accordance with the selected parameter value (Dove, [0022]) (Petruk, [0151]) and further teaches that the device can be used in testing and measuring (Dove, [0006]) (Petruk, [0064]) but does not specifically teach that the device is a rheometer. Since rheometer is a testing and

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measurement device, it would be obvious to use the combination of Dove and Petruk to control the operation of a rheometer.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu D. Vu. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4057.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Bashore, can be reached at 571-272-4088.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

and / or:

571-273-4057 (use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper / amendment be faxed directly to them on occasions).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kieu D Vu/
Primary Examiner, Art Unit 2175

